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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,038	09/21/2005	Michael Barry Gravestock	100869-1P US	8079
44992	7590	06/09/2006	EXAMINER	
ASTRAZENECA R&D BOSTON 35 GATEHOUSE DRIVE WALTHAM, MA 02451-1215			CHU, YONG LIANG	
			ART UNIT	PAPER NUMBER
			1626	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,038	<b>Applicant(s)</b> GRAVESTOCK ET AL.	
	<b>Examiner</b> Yong Chu	<b>Art Unit</b> 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6,8 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,8 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. GB04/01132.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/20/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

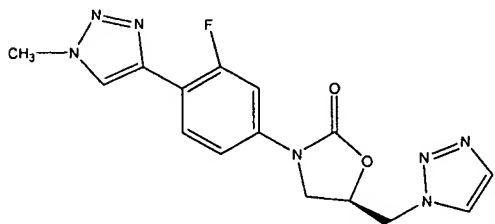
Claims 3, 5, 7, and 9-10 are cancelled by amendment filed on 31 May 2006. Claims 1, and 6 are amended by amendment filed on 31 May 2006. Therefore, Claims 1-2, 4, 6, 8, and 11-13 are currently pending in the instant application.

### *Priority*

This application is a 371 of PCT/GB04/01132, filed on 16 March 2004. Applicants claim the benefit of for U. K. Patent Application 030657.5 filed on 20 March 2003, under 35 U.S.C. §119(a-d).

### *Response to Restriction*

Amendment filed by Applicant's Representative Carol A. Loeschorn on 31 May 2006 has been considered. An election was made with traverse to Claims 1-2, 4, 6, 8, and 11-13 and the specific compound



of Example 8 is acknowledged.

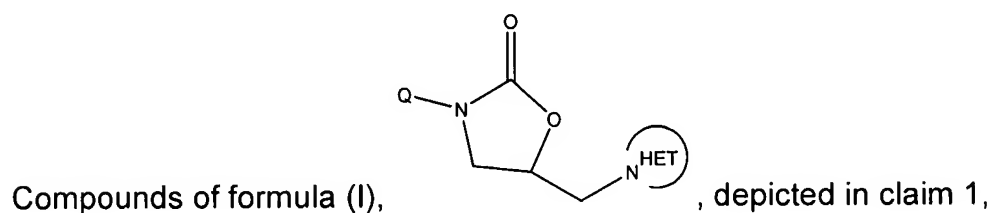
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b)

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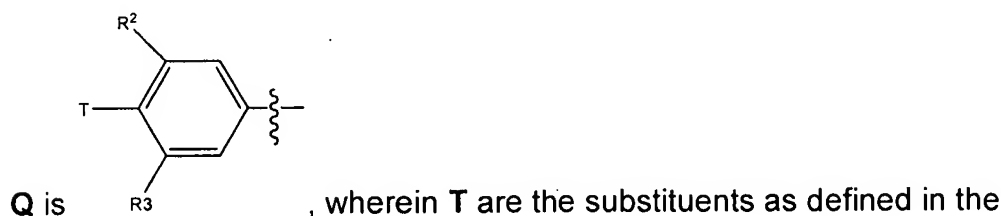
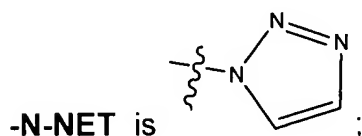
if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Status of the Claims***

The scope of the invention of the elected subject matter is as follows:



wherein:



Supplemental Amendment dated on 31 May 2006; and

the rest substituents are defined as in Claim 1.

As a result of the election and the corresponding scope of the invention identified supra, the remaining subject matters of Claims 1-2, 4, 6, 8, and 11-13 are withdrawn from further consideration pursuant to 37 CFR 1.142 (b) as being drawn to non-elected inventions. The subject matter which are withdrawn from

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consideration as being non-elected subject differ materially in structure and composition and have been restricted properly a reference which anticipated but the elected subject matter would not even render obvious the withdrawn subject matter and the fields of search are not co-extensive.

Therefore, Claims 1-2, 4, 6, 8, and 11-13 are ready for examining.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 4, 6, 8, and 11-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/550,039 ("039"). Although the conflicting claims are not identical, they are not patentably distinct from each other because

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the only different is the definition of R1 of –N-HET, wherein the R1 is H for the instant Application, and R1 is (1-4C)alkyl for the reference “039”. It is *prima facie* for the one skilled in the pertinent art that a compound of formula (1) with R1 is H is obvious over the one with R1 is (1-4C)alkyl, especially when both classes of the compounds have antibacterial activity. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

No claims are allowed.

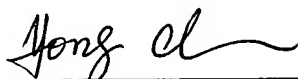
### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759. The examiner can normally be reached between 7:00 am - 3:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

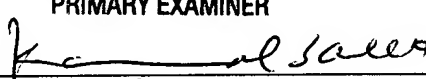
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yong Chu, Ph.D.  
Patent Examiner  
Art Unit 1626

KAMAL A. SAEED, PH.D.  
PRIMARY EXAMINER

*for* 

Joseph K. McKane  
Supervisory Patent Examiner  
Art Unit 1626